

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Telecommunications Relay Services and)	
Speech-to-Speech Services for)	CG Docket No. 03-123
Individuals with Hearing and Speech Disabilities)	
)	
Structure and Practices of the Video Relay)	
Service Program)	CG Docket No. 10-51
)	
Petition for a Notice of Proposed Rulemaking)	
To Revise the Interstate TRS Fund)	RM - _____
Contribution Methodology)	

REPLY COMMENTS OF IDT TELECOM, INC.

IDT Telecom, Inc.
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June 11, 2015

INTRODUCTION

IDT Telecom, Inc. ("IDT") has been attempting, for quite some time, to engage the Commission in a dialogue regarding the need for reform of the Telecommunications Relay Service Fund ("the Fund.") For the coming 2015-2016 Contribution Year, more than 98% of the nearly one billion dollars¹ of Projected Provider Payments are for Internet-based relay services. However, in direct violation of the jurisdictional separations mandate of 47 U.S.C. § 225(d)(3)(B) as implemented under 47 CFR §64.604(c)(5)(ii), the Projected Provider Payments intended to compensate relay service providers for intrastate Internet-based relay services are set to be recovered from the interstate and international jurisdictions. Additionally, the Projected Provider Payments intended to compensate relay service providers for domestic relay services are set to be recovered from the international jurisdiction. The harm to IDT and likely hundreds of other contributors to the Fund is real, it is quantifiable and it must be stopped. In its Initial Comments,² IDT proposed a way to maintain the availability of relay services for deaf, hard-of-hearing and speech impaired Americans (and to maintain a lawful compensation mechanism for relay service providers) while expanding the Fund contribution base and establishing a more equitable, lawful contribution methodology. IDT urges the Commission to consider and adopt the measures proposed by IDT, as they represent the best option to preserve the availability of (and compensation for) relay services.

¹ \$964,112,718, See, "Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate Supplemental Filing," *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *Structure and Practices of the Video Relay Service Program*; CG Docket No. 10-51 (May 1, 2015) at Exhibit 2.

² See generally, Initial Comments of IDT Telecom, Inc., CG Docket No. 10-51, CG Docket No. 03-123, (Filed June 4, 2015).

I. IDT IS THE ONLY COMMENTER WHOSE PROPOSAL WILL HELP STABILIZE THE FUND

The first round of comments submitted share a consistent theme/threat: increase the size of the Fund and the payout to relay service providers³ or consumers will be harmed.⁴ Not surprisingly, all of these commenters are relay service providers and, as such, benefit from higher compensation rates and methodologies that support higher compensation rates. Further unsurprisingly, not one of these commenters contemplates the impact of their proposals on the Fund – the additional 80 million dollars⁵ these increases cost or the impact on the carriers compelled to pay the billion dollar bill. But, like the parent who has to pick up the check when out to dinner with his children who've yet to understand that there's no such thing as a free meal, IDT does not have the luxury to blindly support proposals that increase the size of the Fund without contemplating how to actually pay for these increases. And because IDT finds that the comments in support of increased VRS rates and in support of inflated IP CTS rates fail to account for the payment of the 80 million dollars their proposals would cost, we must oppose them.

IDT is the only commenter in this proceeding focused on how to actually pay the bill the relay services providers want the Commission to write. IDT's proposal is quite simple. After

³ Joint Comments of All Six VRS Providers on Rolka Loube Payment Formulas and Funding Requirements, CG Docket No. 10-51, CG Docket No. 03-123, (Filed June 4, 2015) ("All Six VRS Providers"); Separate Comments of ASL Services Holdings, LLC on Rolka Loube Payment Formulas and Funding Requirements, CG Docket No. 10-51, CG Docket No. 03-123, (Filed June 4, 2015) ("ASL Services"); Comments of Convo Communications, LLC, CG Docket No. 10-51, CG Docket No. 03-123, (Filed June 4, 2015); Sorenson Communications, Inc. and CaptionCall, LLC Comments on Rolka Loube Payment Formulas and Funding Requirements, CG Docket No. 10-51, CG Docket No. 03-123, (Filed June 4, 2015) ("Sorenson and CaptionCall Comments").

⁴ ("[R]ate cuts will inevitably degrade the quality of VRS service..."), All Six VRS Providers at 1; ("The Deaf community may have to settle for 'basic' VRS, less experienced video interpreters, basic service functionality, limited customer service hours, and less customer support."), ASL Services at p. 2.

⁵ Adopting the Fund Administrator's alternative calculation for IP CTS would reduce the Fund budget by more than 53 million dollars; increasing the VRS rates as requested would add more than 27 million to the Fund budget.

appropriate notice and comment is given, the FCC should: (1) acknowledge its authority to administer and oversee compensation for intrastate Internet-based relay services; (2) make minor changes to the carrier revenue reporting process to allow carriers to separately report revenue by jurisdiction (intrastate, interstate or international); (3) ensure that relay service providers report calls by their corresponding jurisdiction; (4) have the Fund Administrator develop a budget and contribution factor for each jurisdiction of relay services and to invoice contributors accordingly; (5) compensate relay service providers from the budget established for each corresponding jurisdiction; and (6) establish a year-end true up process to be applied, per jurisdiction, to account for any under or over payments.

It is virtually certain that some, if not most, commenters will oppose IDT's proposal: any time the *status quo* perceives their interests as being threatened, they are bound to react negatively. But what IDT urges the Commission to do is consider IDT's argument and proposal not as a matter of policy – something can be approved of or rejected based on its perceived benefits and disadvantages to all stakeholders – but rather, consider IDT's proposal as a matter of compliance with the law. As a matter of law, IDT's proposal is beyond reproach: Congress established jurisdictional separations as a requirement for relay services and the Commission has, for more than a decade and a half, chosen to treat this requirement as an inconvenience to be ignored. This cannot continue. Moreover, IDT has offered the Commission a way out of the hole it has dug: acknowledge its authority to oversee intrastate relay services and build tracking, reporting and compensation mechanisms that are consistent with jurisdictional separations and fair to contributing carriers. By adding intrastate revenue to the Fund contribution base, IDT's proposal would likely double or triple the Fund contribution base and,

while that does not address the concern that the Fund is growing at an untenable pace, it will ensure that relay service providers can be compensated in a manner more equitable to carrier contributors.

II. ALLOWING FOR TRS FUND COST RECOVERY THROUGH A LINE ITEM WILL ADDRESS CONCERNS THAT A REVISED CONTRIBUTION METHODOLOGY WILL UNFAIRLY BURDEN INTRASTATE PROVIDERS

COMPTEL, like IDT, supports allowing for an explicit TRS Fund line item recovery.⁶ There is no statutory mandate prohibiting line item recovery. Moreover, upon information and belief, most states allow for a recovery of intrastate relay service charges. And since an unknown, but likely considerable, portion of the Fund is for the recovery of intrastate Internet-based relay services, any policy or legal basis for the Commission's present position prohibiting recovery would appear to be fundamentally weakened, as intrastate relay costs are recoverable via a line item when administered by the states. As a policy matter, IDT is aware that if/when the Commission implements the proposals recommended by IDT, certain carriers – particularly intrastate carriers but, to a lesser extent interstate carriers, will find themselves placed with a greater Fund contribution obligation. And while IDT does not have sympathy for carriers who have, for more than a decade and a half, had their bill paid by other carriers, we are sympathetic to their concern about how to recover their newly-imposed Fund obligations. IDT believes that allowing for recovery of the TRS Fund contribution from explicit line item goes a long way toward addressing this concern. Therefore, as a matter of law (there is no prohibition against line item recovery) and a matter of policy (it is unreasonable to impose a billion dollar

⁶ COMPTEL's Comments on the Proposed Contribution Factor, CG Docket No. 10-51, CG Docket No. 03-123, (Filed June 4, 2015) at pp. 3-8

obligation upon the industry without any explicit means of recovery), the Commission should allow, either in this proceeding or at the conclusion of a NPRM, recovery of the TRS Fund contribution via an explicit line item.

III. THE COMMISSION SHOULD APPROVE A REDUCED IP CTS RATE

Two commenters⁷ suggest that the Commission maintain the MARS methodology for the purpose of establishing the IP CTS rate whereas another⁸ recommends a different methodology be implemented. As noted in our Initial Comments, the recovery of intrastate IP CTS from the interstate and international jurisdictions is a violation of 47 U.S.C. § 225(d)(3)(B) as implemented under 47 CFR §64.604(c)(5)(ii). Accordingly, to the degree that the Commission would allow recovery of intrastate IP CTS from the interstate and international jurisdictions, IDT opposes any methodology. To the degree the Commission considers the appropriate methodology for the recovery of IP CTS from a revenue base corresponding to the jurisdiction of the compensable call, however, IDT recommends that the Commission approve a contribution methodology that (1) allows for service providers to reasonably be compensated for their calls; and (2) reduces the burden on Fund contributors. Without commenting on the merits of the approach recommended by Sorenson and the alternative methodology proposed by the Fund Administrator, IDT believes that either is preferable to a continued reliance on the MARS methodology which, by all accounts, results in a per minute rate that, when multiplied by the exploding number of IP CTS, adds over 53 million dollars to the Fund budget.

⁷ Comments of Sprint Corporation, CG Docket No. 10-51, CG Docket No. 03-123, (Filed June 4, 2015) at pp 1-2; Comments of Hamilton Relay, CG Docket No. 10-51, CG Docket No. 03-123, (Filed June 4, 2015) at pp. 3-12.

⁸ Sorenson and CaptionCall Comments at pp. 5-8.

IV. THE ARGUMENTS MADE BY SORENSON AND CAPTIONCALL FAIL – BADLY

In their Reply Comments,⁹ Sorenson and CaptionCall oppose IDT's recommendation that the Commission recognize the jurisdiction of Internet-based relay service calls and secure compensation for such calls from the corresponding jurisdiction. Their arguments are weak and fail - badly. They argue that the Commission has "discretion on how to fund TRS both pursuant to statute and under the standard jurisdictional analysis under Section 2(b) of the Communications Act."¹⁰ They are wrong: Congress mandated jurisdictional separations in 47 U.S.C. § 225(d)(3)(B) and the Commission acknowledged jurisdictional separations in 47 CFR §64.604(c)(5)(ii). Moreover, the Commission in each Order approving a new Internet-based relay service acknowledged that its authority (pursuant to the inclusion of the word "generally" in 47 U.S.C. § 225(d)(3)(B)) to secure compensation for intrastate service from the interstate and international jurisdictions is for a limited time: this interpretation of "generally" is not of IDT's making. IDT's position is that 15, 13 and/or eight years is not a limited time. If the Commission *now* believes that the word "generally" means something other than what it has meant for the last 15 years, there should be a discussion within a NPRM, not a proclamation.

Sorenson and CaptionCall next, rather disgracefully, claim that IDT seeks to have the Commission curtail its obligation to ensure the availability of TRS.¹¹ Nothing could be further from the truth. IDT seeks to retain the availability of all Internet-based relay services and we believe the FCC should administer the provision of and compensation for such services: IDT

⁹ Sorenson Communications, Inc. and CaptionCall, LLC Reply Comments on Rolka Loube Associates LLC Payment Formulas and Funding Requirements, CG Docket No. 10-51, CG Docket No. 03-123, (Filed June 11, 2015) ("Sorenson and CaptionCall Reply Comments").

¹⁰ *Id.* at p. 2.

¹¹ *Id.* at p. 3.

simply asserts that, as a matter of law, the funding for these services should come from the corresponding jurisdiction.

Sorenson and CaptionCall's reliance on a Section 2(b) analysis is a red herring. As IDT noted in its Initial Comments, 47 CFR 64.604(c)(ii)(D)(2)(i)-(x) compels sufficient information to determine the calling and called party locations. And while the Commission could conclude that the (potentially) nomadic nature of the services compels additional information to determine "actual" jurisdiction, the Commission could also conclude that the (potentially) nomadic nature of the services is effectively meaningless because the services are all compensated from the same Fund and that no efforts are necessary to further determine the "true" physical location of one or both parties. Or, to the degree the Commission concludes that the data required is insufficient to determine the physical location of one or both parties and obtaining that information is necessary, yet impossible or burdensome to obtain, the Commission can consider implementing a proxy, as it did when it imposed universal service obligations upon Interconnected VoIP.¹²

IDT does not suggest – nor do we believe – that an acknowledgement that some Internet-based relay service calls are intrastate (an acknowledgement, by the way, that the Commission made every time it approved compensation for the Internet-based services) means that the intrastate calls must be compensated via a fund managed by the respective states

¹² IDT asserts that the issue of a proxy is less complicated than was the case with Interconnected VoIP because with Interconnected VoIP, states sought to impose a universal service charge on interconnected VoIP revenue at the same time the FCC sought impose a Federal universal service charge, thus raising the concern of double-counting. However, with TRS, all jurisdictions of the Internet-based relay services would be managed by the Commission, meaning that there is no state interest that needs to be accounted for. All the Commission must do is "generally" ensure that the costs caused are recovered from the corresponding jurisdiction. IDT does not expect (nor does it think the statute compels) *exact*, 100% jurisdictional separations – particularly when just exactness is exceedingly difficult or impossible.

(Sorenson and CaptionCall make this argument in their effort to scare the Commission and, quite possibly, their own relay service customers: it is hard to imagine the commenters would maintain this position if the issue were presented to them by the Commission.)¹³ IDT believes that pursuant to 47 U.S.C. § 225(b)(1) (“the Commission shall ensure that interstate and intrastate telecommunications relay services are available”), the Commission has the authority to oversee the administration of intrastate relay services – particularly in the case of the Internet-based relay services which present unique questions which may not be present with non-Internet-based relay services.¹⁴ Indeed, if the Commission does not have the authority to administer intrastate relay services, then what has it been doing for the last 15, 12 and eight years administering the intrastate components of VRS, IP Relay and IP CTS, respectively?

What is perhaps most frustrating about Sorenson and CaptionCall’s comments is that in their efforts to be self-serving, they fail to account for rights of the contributors to the Fund and, ultimately, they fail to recognize the benefit IDT’s proposal provides to relay service providers. Sorenson and CaptionCall focus solely on the impact of the proposal on *their* duties and obligations (“[T]here is no service- or engineering-driven reason why VRS or IP CTS providers would need to know their users’ actual locations...”)¹⁵ There is absolutely no acknowledgement that their intrastate calls are being compensated from interstate and international providers, contrary to the jurisdictional separations mandate of Congress and

¹³ Sorenson and CaptionCall Reply Comments at p. 7.

¹⁴ IDT also believes that, for example, if a state refused to establish a relay service program, the FCC would be compelled per Section 225 to oversee that state’s program. Indeed, the language of Section 225 does not *compel* states to develop their own programs: 47 U.S.C. § 225(f)(1) notes that states can “desire” to establish a state program, thus making the state’s role *voluntary*, not mandatory. Moreover, 47 U.S.C. § 225(f)(2) sets standards for approval of a state program: if a well-intentioned state falls short of meeting the certification requirements, that state cannot establish a program and the obligation would fall upon the Commission to oversee the relay services within the state.

¹⁵ Sorenson and CaptionCall Reply Comments at p. 7.

contrary to simple, old-fashioned fairness. Moreover, Sorenson and CaptionCall's imperceptive analysis extends to their failure to understand that including intrastate revenue within the contribution base – a base that is shrinking at a perilous pace – increases the base by multiples and provides considerable financial security for the Fund. Ultimately, Sorenson and CaptionCall's arguments fail as a matter of law and bad policy and they should be treated accordingly.

CONCLUSION

While various self-interested relay service providers present arguments in support of increased rates and contribution methodologies that would increase rates with no concern for how to pay for these increasing costs from an ever-diminishing contribution base,¹⁶ IDT is the only party whose comments actually address how to pay the bill. As IDT has noted here and more extensively in its Initial Comments,¹⁷ the Commission is compelled as a matter of law to cease compensating intrastate Internet-based relay services from the interstate and international jurisdictions and to cease compensating domestic relay services from the international jurisdiction. While a series of steps must be taken to ensure compliance with 47 U.S.C. § 225(d)(3)(B) as implemented under 47 CFR §64.604(c)(5)(ii), the primary step the Commission must take is to expand the contribution base to include intrastate revenue and to secure compensation for intrastate Internet-based relay services from the intrastate jurisdiction. Additionally, the Commission should allow for contributors to recover contributions to the TRS Fund from an end user surcharge. Moreover, the Commission should

¹⁶ The Fund contribution base has been reduced every year since the Funding Year 2008 - 2009, with a reduction of nearly 22% since the 2004 - 2005 Funding Year.

¹⁷ Initial Comments of IDT Telecom, Inc., CG Docket No. 10-51, CG Docket No. 03-123, (Filed June 4, 2015).

implement a rate for IP CTS that allows for service providers to reasonably be compensated for their calls and reduces the burden on Fund contributors. And finally, the Commission should recognize the arguments presented by Sorenson and CaptionCall as the short-sighted, self-serving, legally-deficient scare tactics they truly are and reject them because they fail to secure lawful funding for intrastate Internet-based relay services' from the intrastate jurisdiction and fail to address the financial crisis that the Fund is facing.

Respectfully submitted,

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